

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 640 of 1998

in

SPECIAL CIVIL APPLICATION No 8236 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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J M THAR

Versus

GENERAL MANAGER (PAD)

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Appearance:

MR DEVESH A BHATT for Appellant

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

Date of decision: 08/05/98

ORAL JUDGEMENT

This appeal is filed against summary dismissal of SCA No.8240 of 1997 by the learned Single Judge vide an order dated March 6, 1998.

2. The appellant was the original petitioner. A departmental inquiry was instituted against him which is pending. It is an undisputed fact that even at an earlier occasion, a petition being SCA No.4002 of 1997 was filed in this court which came up for hearing before the learned Single Judge who by an order dated June 4, 1997, dismissed the same by passing a speaking order. Para 2 and 3 thereof read as under:-

"When the departmental enquiry is very much pending, it is open to the petitioner to raise all contentions before the inquiry office and the disciplinary authority which are sought to be raised in the present petition. No order of penalty or any order adverse to the petitioner is passed so far. The petition is, therefore, premature and cannot be entertained at this stage."

"As far as the prayer for a direction to provide the petitioner with a copy of the judgment of the Bombay High Court is concerned, it is open to the petitioner to request the inquiry officer, the disciplinary authority and/or any other higher authority which will look into the said request and take appropriate decision in accordance with law."

3. It appears that in view of certain observations made by the learned Single Judge, a prayer was made by the appellant to supply certain documents including a decision rendered by the High Court of Bombay but it was not supplied on the ground that it was not relevant to the enquiry. It is also the case of the appellant that though the enquiry was delayed and there was lack of authority on part of the Assistant General Manager in initiating proceedings, as the bank had prejudged the issue and decided to take punitive action against him, necessary documents were not supplied, personal hearing was not given and that is why the appellant was constrained to file a fresh petition. When the present petition i.e. SCA 8240 of 1997 was placed before the learned Single Judge it was dismissed, inter alia observing that at an earlier occasion a petition was filed which was dismissed. In the opinion of the learned Single Judge, thereafter the matter was not finally decided by the bank and hence the petitioner was not entitled to file fresh petition. In the opinion of the learned Single Judge that "there is no change in the situation whatsoever from the date of dismissal of the said petition till today. Hence, this petition is also

summarily rejected."

4. Various contentions were raised by Mr.B.P.Tanna, Sr.Advocate appearing with Mr.Devesh Bhatt. It was submitted that necessary documents were not supplied to the appellant which will go to the root of the enquiry and the enquiry is, therefore, vitiated; that the Assistant General Manager has no power, authority or jurisdiction to issue chargesheet and the issuance of chargesheet which is the basis and foundation of enquiry is without jurisdiction and consequently all proceedings are liable to be quashed; there is gross and unexplained delay on the part of the bank in initiating the proceedings and on that ground also, the enquiry is liable to be quashed. On merits also, it was contended that the appellant has not committed any illegality or irregularity of a serious nature. At the most it can be said that there was some carelessness on the part of the appellant (which is also not correct), an enquiry cannot be permitted to be continued indefinitely. Relying on a decision of the High Court of Bombay in Vigro Steels V/s. Bank of Rajasthan and Others AIR 1998 Bombay 82, it was submitted that the judgment of a Division Bench as well as the judgment of a Single Judge from which the above appeal was filed before the Division Bench were not only relevant but material documents for defence of the appellant and inspite of specific demand, the documents were not supplied which has resulted into miscarriage of justice and on that ground also, LPA deserves to be admitted. It was argued that the learned Single Judge has committed a error of law in holding that there was no change in circumstances whatsoever. The Learned Single Judge has completely ignored the fact that after the order passed in SCA 4001 of 1997 granting liberty to the appellant permitting him to request the bank authorities to supply documents, a prayer was made which was rejected illegally. That was a circumstance, which ought to have been taken into account and dismissal of petition only on the ground that since the earlier petition was disposed of, the second petition was not maintainable was illegal and unlawful. Finally, it was submitted that the appellant is on the verge of retirement as within a period of about one month, he will retire. Only with a view to ruin his service career, the enquiry is now sought to be expedited. Hence, this court may grant an appropriate relief in his favour.

5. Mr.K.G.Vakharia, Sr.Advocate with Mr.M.K.Vakharia, on the other hand, supported the order passed by the learned Single Judge. He submitted that the Learned Single Judge has not committed any error of

law in not entertaining the petition at this stage. When the inquiry is pending and no punitive action is taken ordinarily in the exercise of extraordinary jurisdiction under Article 226 of the Constitution, this court does not entertain a petition and when the learned Single Judge has not entertained, it cannot be said that by not doing so, any illegality has been committed which requires interference by appellate court.

6. In the facts and circumstances, in our opinion, the LPA deserves to be dismissed. We may state that though substantial arguments were advanced by both the sides on merits of the matter, we do not deal with merits of the case inasmuch as the enquiry is still not over. The main question, therefore is as to whether the Learned Single Judge has committed any error in not entertaining the petition. It was urged on behalf of the appellant that there was gross delay on the part of the bank authorities in holding the enquiry and Assistant General Manager has no jurisdiction to issue chargesheet. It is the case of the bank that the Assistant General Manager has been authorized by delegating powers in his favour and that he could issue a chargesheet. No doubt the appellant contended that the stand taken by the bank in a petition filed by an employee in SCA 7079 of 1997 was in conflict with the stand taken by the bank in this case. In our opinion, however, such question cannot be decided in extraordinary jurisdiction particularly when at an early occasion when SCA 4001 of 1997 was filed, this ground was very much there. The same reasoning would apply to delay because it is not that after dismissal of the SCA 4001 of 1997, a fresh enquiry is ordered or fresh chargesheet is issued. It is not disputed that order passed in previous petition was not appealed against and the order stands. In these circumstances, in our opinion, inquiry cannot be held to be without jurisdiction on that ground.

7. Regarding the order passed by the learned single Judge, it is true that after the order passed in previous petition, an application was made for supply of certain documents which was rejected but in our opinion, on that ground, the petitioner is not entitled to any relief. The reason is also put forward by the bank in its reply wherein it was stated that the judgement on which reliance was placed was not relevant to the controversy in the present proceedings. We may not be understood to have stated anything on merits of the matter, but looking to the reported decision, it is clear that an order was passed in a summary suit in which unconditional leave was granted by a learned Single Judge exercising original

jurisdiction by the High court of Bombay which was challenged and the Appellate court confirmed the said order. If the stand of the bank is that in a departmental enquiry, the said document is not relevant and is not supplied, it cannot be said to be illegal or arbitrary. If ultimately the Inquiry Officer or any authority holds that it was a material document, it would have its effect on the final outcome of the enquiry but at this stage, in our opinion, no petition could be entertained and by dismissing the petition, the learned Single Judge has not committed any illegality.

6. For the aforesaid reasons, we do not find any ground for interfering the order passed by the learned Single Judge. The appeal deserves to be dismissed and is accordingly dismissed.

7. Before parting with the order, we may state that all observations have been made to decide this LPA and as and when the enquiry will be taken, the authority will decide the same strictly in accordance with law without being influenced in any manner by the observations made by us in this order. The learned Single Judge has also observed and we do not interfere with that part of the order that it is open to the appellant to raise all contentions at the enquiry available to him in law.

8. Lastly, a prayer was made by the learned Counsel that if any prejudicial order is passed by the Respondent authority, it may not be implemented for some time so as to enable the appellant to approach an appropriate forum. When enquiry is pending and the learned single Judge has not entertained a petition and we are summarily dismissing the LPA, such a prayer cannot be granted and hence the prayer is rejected. Notice discharged. No order as to costs.

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